

offending became public knowledge .You even threatened the complainants parents to let their daughter to be with you.

3. When cautioned by the Police you admitted the allegations.
4. I must remind you that it is against the law to have sex with a child who is under the age of 13 years. In your case you used threats against the complainant to have sex with her .The sentence I impose on you today is to mark the gravity of your offending and to show public disapproval of your actions and it should be a deterrence to any future offending on your part or the public at large.
5. The bottom line in cases of sexual abuse as outlined by the Court of Appeal in *Public Prosecutor v Gideon* [2002] VUCA 7 is that:

“It will only be in a most extreme of cases that suspension could ever be contemplated in a case of sexual abuse..... Men who take advantage sexually of young people forfeit the right to remain in the community.”

6. Prosecuting counsel submits that I adopt a starting point of 5 to 6 years imprisonment and that the sentence be concurrent with any sentence imposed by the Magistrate Court. It was further submitted that the sentence should not be suspended .Aggravating features of your offending are:

- Age disparity;
- The offence was repeated over a period of three years;
- The use of threats upon the complainant into submitting to your sexual demands;

7. Defence counsel on your behalf submits that I adopt a starting point of 3 to 4 years submitting that the offending started when you were both adolescents from 2011 and continued until 2013 when you turned 21 as an adult. She submits that any sentence be partially suspended. Factors submitted in mitigation are:

- Guilty plea entered at the first opportunity;
- First time offender in relation to sexual offences ;
- Time spent in custody prior to sentencing, 1month 5 days to be deducted ;
- That you are remorseful for your actions;

8. I am grateful to your probation officer for providing a presentence report which provides your personal details which I extract as follows:

- You are 23 years old and you are from Amambwe village on Malo Island ;
- You did not complete primary school;
- You earn your living by farming and gardening;
- You are living in a defacto relationship and have a baby girl born three weeks after your arrest;
- There has been no custom reconciliation;

9. Your probation officer states that you were convicted in the Magistrate court recently for possession of cannabis and sentenced to 3 months on supervision. The sentence is yet to be activated as you were remanded in custody for the offence of unlawful sexual intercourse. In sentencing you today I have taken into account the submissions made by both counsels .The appropriate sentence therefore must be a custodial one. I adopt a starting point of 5 years

imprisonment. Considering the aggravating factors I allow an uplift to 6 years imprisonment. Your early guilty has saved the complainant from recounting the facts in open court and this also means that you are entitled to a full one third (1/3) discount of your sentence which is reduced to 4 years. Time spent in custody is rounded off to 2 months is also deducted leaving you with an end sentence of 3 years and 8 months imprisonment which is effective from today. Your sentence will not be suspended and it is to be concurrent with any sentence imposed by the Magistrate Court.

10. You have 14 days to appeal this decision if you are not happy with it.

DATED in Luganville this 17th day of April 2015.

BY THE COURT

DUDLEY ARU*

Judge

